

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 66/88, 67/88, 126/89, 127/89, 128/89,
129/89, 130/89, 115/89, 2/90, 3/90, 4/90, 13/90, 55/90,
70/90, 108/90, 109/90, 110/90 and 121/95.

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DIPAK LALBHAI & CO.,

Versus

AMBICA MILLSS LTD.

Appearance:

MR AJ PATEL for Petitioner

MR SI NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 17/01/97

COMMON ORAL JUDGEMENT

All the above petitions except Petition No.121 of 1995 are filed by various creditors of Shri Ambica Mills Ltd and they are seeking an order of this court to wind up the said company as they claim that the said company

is heavily indebted and is not in a position to satisfy their debts and the debts of others.

2. The petition No.121 of 1995 is registered on the strength of the report filed under Section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985 by the Board under the said Act and the Board is also seeking an order of winding up the said Shri Ambica Mills Ltd.

3. Therefore, in view of the above facts, it would be quite clear that all these petitions are pertaining to one and the relief. I, therefore, proceed to dispose of all these petitions by this common judgment.

4. It was urged before me by some of the petitioners that in view of the report filed by the Board under the said Act of 1985 and in view of the declaration issued under Section 16 of the said Act of 1985, these winding up petitions which were pending in this court will have to be disposed of and dismissed as they were not surviving in view of the report filed by the board under the said act of 1985 under Section 20 of the said Act. In support of that contention, the case of the Division Bench of this Court in TESTELS LIMITED, AHMEDABAD V. RADHABEN RANCHHODBHAI CHARITABLE TRUST, AHMEDABAD A.I.R. 1988 GUJARAT, 213 has been cited before me. It is true that in the said case the Division Bench of this court has held that the winding up proceeding which is started before the action taken under the said Act of 1985 will have to be dismissed and they need not be kept in abeyance or alive. But the said decision of Division Bench of this Court could not be said to be a good law in view of the subsequent pronouncement by the Apex Court in the case of GRAM PANCHAYAT V. SHREE VALLABH GLASS WORKS LTD. AND OTHERS A.I.R.1990, S.C., 1017 In the said case of A.I.R.1990, S.C.,1017 (Supra) the Apex Court has taken a view that :

"If they are to be dismissed question of obtaining permission of the Board for their continuance would not arise. In fact the very stipulation that with the consent of the Board or the Appellate Authority the proceedings can be continued, would support the view that the proceedings are to be suspended and are not to be dismissed."

It therefore could not be said that on account of the

action under the said Act of 1985, the action under the Companies Act stands extinguished. The Single Judge of this Court in the case of M.C.B.Private Ltd. v. SLM Maneklal Ltd., 1992 (1) G.L.H., 95 has considered this aspect and has held that the judgment of the Division Bench of this Court in A.I.R. 1988, Gujarat, 213(Supra) is overruled by the Apex Court in the case of A.I.R.1990 SC.1017(Supra). I fully agree with the view taken by the Single Judge of this Court and I do not find any reason to take a different view or to have reference to a larger bench in view of the clear provisions of Section 20 and 22 of the said Act of 1985 as well as the decision of the Apex Court in the case of A.I.R. 1990, 1017. Thus, I hold that merely because there is a report of the Board under the said Act of 1985 after proceeding under Section 16, it could not be said that these winding up petitions must be dismissed or disposed of.

5. In all these petitions, the notices were issued to the company in question. There is no contention by the company in question as well as nobody has come forward to contend that the order of winding up of the said company need not be passed in this case. The very fact that number of creditors have come before the court by contending that the company in question is not in a position to satisfy the debts and the fact that the Board under the Act of 1985 has also found that there is no possibility of setting up any scheme and continue the said company, I hold that the present petitions will have to be allowed. If the provision of Section 20 of the said Act of 1985 is taken into consideration, then it would be quite clear that the report filed by the Board under Section 20 of the said Act of 1986 will have to be accepted by the court. This court is bound to accept the said report. Therefore, in view of the said report of the Board also I hold that this is a fit case to pass an order of winding up of the said company.

6. Then the question arises is as to whether it is necessary for this court to follow the procedure under the Companies' Act of issuing proclamation and other procedure before passing the order of winding up. The Act of 1986 provides under Section 16 that the Board under the said Act has to make an inquiry into the sick industrial company. Accordingly the said Board has made the necessary inquiry and after making the necessary inquiry, the Board has filed its report under Section 20. While making such an inquiry, the Board as provided by the said Act of 1985, had tried to find out as to whether the sick company in question could be continued by working out any scheme and it had also tried to collect

the material regarding its indebtedness and its possibility of survival. Therefore, while making the said inquiry and before filing its report under Section 20, the Board under the said Act of 1985 had carried out all the procedure which is contemplated under the Companies' Act before passing of order of winding up. Therefore, in the circumstances, it would be merely the duplication of the procedure if I again order to have the procedure of proclamation and others before passing the order of winding up. This court in earlier decision of Company Petition No.72 of 1991 (Coram : S.D. Shah, J.) has held as under :

"The procedure, which is required to be followed prior to passing up the order for winding up under the Companies Act is not required to be followed in a case where a High Court receives opinion from the Board under Section 20 of the Act and orders winding up of the Sick Industrial Company. On plain reading of sub section 2, this appears to be the correct interpretation. That also appears to be the intention of the legislature as can be gathered from Section 15 to 19 of the Act. (Act of 1985)"

The above observations/principle laid down by His Lordship S.D.Shah,J. supports my view that it is not necessary to again follow the whole procedure and that I can pass an order of winding up the said Company by allowing this petition. I, therefore, pass the following order.

All the petitions are allowed. I order that the Company i.e. Shri Ambica Mills Ltd. to be wound up and I appoint the official Liquidator as the Liquidator of the Company namely Shri Ambica Mills Ltd. A copy of this order shall be served upon him. The Official Liquidator shall take charge of the company together with all its assets, records, books, machineries, spare-parts, stores, manufactured goods, lands and buildings etc., and all other properties after taking inventory in that behalf. The Official Liquidator shall have all the powers as prescribed under Section 456 and 457 of the Companies Act and he would be at liberty to seek direction from this court whenever he needs the same.

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